

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Griffin	Team: Squad #5	CCRB Case #: 201709793	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/17/2017 11:00 AM	Location of Incident: 71st Precinct stationhouse and P.S. 221	Precinct: 71	18 Mo. SOL 5/17/2019	EO SOL 5/17/2019	
Date/Time CV Reported Sat, 11/18/2017 5:43 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/27/2017 11:34 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Delare Rathour	05293	952149	071 PCT
2. POM Michael Carnacchio	03857	960327	071 PCT
3. An officer			071 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Discourtesy: At the 71st Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)	
B.POM Delare Rathour	Abuse: At P.S. 221, Police Officer Delare Rathour threatened to arrest § 87(2)(b)	
C.POM Delare Rathour	Abuse: At P.S. 221, Police Officer Delare Rathour threatened to notify Administration for Children's Services.	
D.POM Delare Rathour	Abuse: At P.S. 221, Police Officer Delare Rathour threatened to arrest § 87(2)(b)	
E.POM Michael Carnacchio	Abuse: At P.S. 221, Police Officer Michael Carnacchio refused to provide his name and shield number to § 87(2)(b)	

## Case Summary

On November 18, 2017, § 87(2)(b) filed the following complaint with IAB via telephone. On November 27, 2017, IAB referred § 87(2)(b) complaint to the CCRB via Log #17-46416.

On November 17, 2017, at approximately 9:15 AM, outside the 71<sup>st</sup> Precinct stationhouse, an unidentified officer allegedly called § 87(2)(b) a “fucking bozo” (**Allegation A: Discourteous Language**, § 87(2)(g)). At approximately 11 AM, at Public School 221, Police Officer Delare Rathour of the 71<sup>st</sup> Precinct allegedly threatened to arrest § 87(2)(b) and notify Administration of Children’s Services (**Allegations B and Allegation C: Abuse of Authority**, § 87(2)(g)). PO Rathour again allegedly threatened to arrest § 87(2)(b) (**Allegation D: Abuse of Authority**, § 87(2)(g)). Police Officer Michael Carnacchio of the 71<sup>st</sup> Precinct allegedly refused to provide his name and shield number to § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was not issued a summons or arrested during the incident.

An audio recording captures a portion of this incident. There is no video evidence.

## Findings and Recommendations

### **Allegation A- Discourteous Language: At the 71st Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)**

It is undisputed that § 87(2)(b) went to the 71<sup>st</sup> Precinct stationhouse regarding an incident which occurred earlier in the morning at P.S. 221. It is undisputed that while at the stationhouse, § 87(2)(b) conversed with PO Rathour, who was the precinct’s Youth Officer. § 87(2)(b) alleged that after speaking to PO Rathour, he spoke to another officer outside of the stationhouse. It remains in dispute whether an officer called § 87(2)(b) a “fucking bozo.”

§ 87(2)(b) testimony (Board Review 1) is as follows. § 87(2)(b) spoke to an officer outside the stationhouse. The officer called § 87(2)(b) a “fucking bozo.” § 87(2)(b) described the alleged subject officer as a uniformed black male, approximately 6’1” tall, approximately 170-175lbs., average build, and no facial hair. The alleged subject officer was paired with a white male with a mustache.

Police Officer Blake Taylor was identified as a potential subject officer as he and his partner on the date of incident matched the physical description provided by § 87(2)(b). The Interrupted Patrol Log and PO Taylor’s Memo Book (Board Reviews 2 and 3) placed PO Taylor and his partner at the stationhouse during the time § 87(2)(b) alleged he was there.

PO Taylor’s testimony (Board Review 4) is as follows. PO Taylor acknowledged being in the stationhouse at the time, but was on meal and was eating in the kitchen, which is not accessible to civilians. PO Taylor denied seeing or interacting with § 87(2)(b) on the date of incident. PO Taylor denied calling § 87(2)(b) a “fucking bozo.” PO Taylor did not remember if he spoke to any civilians during his time at the stationhouse. PO Taylor denied seeing any officer interact with § 87(2)(b) while he was at the stationhouse.

PO Rathour's testimony (Board Review 5) is as follows. PO Rathour remembered seeing § 87(2)(b) speak to other officers inside the stationhouse, but was unable to recall which officers exactly. PO Rathour did not remember seeing an officer that fit the physical description provided by § 87(2)(b) at the stationhouse. PO Rathour did not hear an officer call § 87(2)(b) a "fucking bozo" nor did he hear § 87(2)(b) complain that an officer called him a "fucking bozo."

The 71<sup>st</sup> Precinct's Command Log for the date of incident (Board Review 6) had no entry indicating that § 87(2)(b) was present the stationhouse during the time he alleged and no further information was learned from the document to assist in identifying the subject officer.

§ 87(2)(g)

**Allegation B-Abuse of Authority: At P.S. 221, Police Officer Delare Rathour threatened to arrest § 87(2)(b)**

**Allegation C-Abuse of Authority: At P.S. 221, Police Officer Delare Rathour threatened to notify Administration for Children's Services.**

It is undisputed that after leaving the 71<sup>st</sup> Precinct stationhouse, § 87(2)(b) went to P.S. 221. It is undisputed that § 87(2)(b) was issued a "limited access letter" (Board Review 7) by P.S. 221 restricting § 87(2)(b) access to the school. The letter mandates that § 87(2)(b) is to be escorted by school administration when he picks up/drops off his children. It is undisputed that PO Rathour arrived at P.S. 221 while § 87(2)(b) was attempting to pick up his children. It is undisputed that PO Rathour and § 87(2)(b) began to converse in the vestibule area. It remains in dispute whether PO Rathour threatened to arrest § 87(2)(b) if he left the school and threatened to notify the Administration for Children's Services (ACS).

§ 87(2)(b) testimony (Board Review 1) is as follows. While in the vestibule area of P.S. 221, PO Rathour approached § 87(2)(b) and told him the School Safety Agent Supervisor was on their way to the school and § 87(2)(b) could speak to the supervisor. § 87(2)(b) told PO Rathour that he had been at the school long enough and was going to take his children home. PO Rathour told § 87(2)(b) that if he left the school, he would be arrested and ACS would be notified.

PO Rathour's testimony (Board Review 5) is as follows. PO Rathour did not testify to threatening to arrest § 87(2)(b) if he left the school. PO Rathour told § 87(2)(b) that if he did not leave the school when instructed to, that he would be arrested, since he would be trespassing (given the limited access letter). § 87(2)(b) made a comment to PO Rathour threatening to leave his children unattended at the school. PO Rathour denied threatening to notify ACS himself, but did testify that he told § 87(2)(b) that if he intentionally left his children unattended for long periods of time, that Department of Education policy would require P.S. 221's staff to notify ACS.

PO Carnacchio's testimony (Board Review 8) is as follows. PO Carnacchio testified that he was not in the vestibule area when PO Rathour spoke to § 87(2)(b) and denied hearing ACS become a

topic of conversation between PO Rathour and § 87(2)(b) PO Carnacchio denied hearing PO Rathour threaten to arrest § 87(2)(b) during their interaction.

§ 87(2)(b) testified (Board Review 9) that she did not hear PO Rathour threaten to notify ACS or ACS become a topic of conversation between him and § 87(2)(b). In her phone statement (Board Review 10), School Safety Agent Supervisor § 87(2)(b) did not remember hearing PO Rathour threaten to notify ACS or ACS become a topic of conversation. § 87(2)(b) did remember PO Rathour threatening to arrest § 87(2)(b) if he did not leave the school ground, as it was trespassing.

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**Allegation D- Abuse of Authority: At P.S. 221, Police Officer Delare Rathour threatened to arrest § 87(2)(b)**

**Allegation E- Abuse of Authority: At P.S. 221, Police Officer Michael Carnacchio refused to provide his name and shield number to § 87(2)(b)**

It is undisputed that § 87(2)(b) PO Rathour, § 87(2)(b) and § 87(2)(b) went into a classroom to mediate § 87(2)(b) issues, and § 87(2)(b) began to audio record the conversation on his cell phone. It is undisputed that during the conversation, PO Rathour threatened to arrest § 87(2)(b) for a multitude of offenses. It is disputed whether § 87(2)(b) requested PO Carnacchio's name and shield and whether PO Carnacchio refused to provide the requested information to § 87(2)(b).

§ 87(2)(b) testimony (Board Review 1) is as follows. After PO Rathour threatened to notify ACS, § 87(2)(b) removed his phone and began audio recording. PO Rathour told § 87(2)(b) that it was illegal to record inside a school and he would be arrested if he did so. § 87(2)(b) pretended to turn his cell phone off and placed it in his pocket, while it continued to record. § 87(2)(b) PO Rathour, PO Carnacchio, § 87(2)(b) and § 87(2)(b) went inside a nearby classroom to discuss § 87(2)(b) issues. Inside the classroom, PO Rathour threatened to arrest § 87(2)(b) for trespassing, if he returned to P.S. 221. Once the conversation was over, § 87(2)(b) exited the classroom and asked PO Carnacchio for his name and badge number. PO Carnacchio replied, "I didn't have anything to do with it." PO Carnacchio did not provide his name and badge number to § 87(2)(b).

§ 87(2)(b) provided an audio recording (Board Review 11) which captured the conversation inside the classroom. During his CCRB interview, PO Rathour identified his voice in the audio recording (Board Review 5). At approximately 8:30, PO Rathour is heard telling § 87(2)(b) that if he records again in a New York City public school, he will be arrested. PO Rathour states that if § 87(2)(b) records students, as he did previously when he showed him the video, he, Officer Rathour, will arrest § 87(2)(b). At approximately 14:30, PO Rathour informs § 87(2)(b) that he is going to explain something to him and after that § 87(2)(b) is to leave or else he will be

trespassing. § 87(2)(b) tells PO Rathour to go ahead and arrest him, and PO Rathour replies that if § 87(2)(b) refuses to leave, then he will arrest him. At 16:05, § 87(2)(b) states that he has everybody's name. § 87(2)(b) twice asks, "Can I get your information?" A male voice twice replies, "Don't worry about it."

Given that § 87(2)(b) is heard stating he has everybody's name before asking the male voice in the recording for his information, the context indicates that § 87(2)(b) was asking for the officer's name and/or shield number.

PO Rathour's testimony (Board Review 5) is as follows. Inside the classroom, § 87(2)(b) made a statement about walking through P.S. 221. PO Rathour told § 87(2)(b) that given his limited access letter, he could not walk freely through the school. § 87(2)(b) would be considered trespassing and could be arrested. PO Rathour did not hear § 87(2)(b) request PO Carnacchio's information and did not hear PO Carnacchio refuse to provide his information. PO Rathour reviewed the audio recording, which refreshed his recollection about threatening to arrest § 87(2)(b) for recording in public schools. While at the stationhouse, § 87(2)(b) had shown PO Rathour a video he recorded of students walking through school. PO Rathour stated it is Department of Education policy that no one can record inside a public school. PO Rathour acknowledged hearing himself in the audio recording threaten to arrest § 87(2)(b) if he did not leave and stated school staff asked § 87(2)(b) to leave, and if he did not leave after their conversation, he would be trespassing. PO Rathour did not recognize the male voice heard refusing to provide his information to § 87(2)(b) as PO Carnacchio. The audio recording did not refresh PO Rathour's recollection about hearing PO Carnacchio refuse to provide his information to § 87(2)(b) or hearing PO Carnacchio say, "Don't worry about it."

PO Carnacchio's testimony (Board Review 8) is as follows. PO Carnacchio remained outside the classroom and denied hearing PO Rathour threaten to arrest § 87(2)(b) for trespassing or recording in a public school. PO Carnacchio denied that § 87(2)(b) requested his information and that he refused to provide it to § 87(2)(b). PO Carnacchio denied telling § 87(2)(b) "Don't worry about it." During his CCRB interview, PO Carnacchio reviewed the audio recording and testified it was PO Rathour's voice twice saying, "Don't worry about it." PO Carnacchio denied that it was his voice saying, "Don't worry about it." The audio recording did not refresh PO Carnacchio's recollection about § 87(2)(b) requesting his information.

§ 87(2)(b) testified (Board Review 9) that she did not hear § 87(2)(b) request PO Carnacchio's name or badge number. § 87(2)(b) (Board Review 10) did not recall if § 87(2)(b) requested PO Carnacchio's name or badge number.

According to New York City's Department of Education Regulation of the Chancellor Number A-640, filming or photographing in school facilities during school hours will be permitted only with the written approval of the principal. No students may be filmed or photographed except with the express written permission of the principal and in addition, the respective Department employee or the student's parent or guardian (Board Review 12).

As per Penal Law 140.05, a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon a premise (Board Review 13).

According to Patrol Guide Procedure 203-09, officers must courteously and clearly state their rank, name, shield number, and command, or otherwise provide them to anyone who request them to do so (Board Review 14).

Given the requirements established in the Regulation of the Chancellor A-640, § 87(2)(b) was not authorized to film school facilities and students, as he did not have permission from the necessary entities to do so.

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#### Civilian and Officer CCRB Histories

- This is § 87(2)(b) second CCRB complaint. § 87(2)(b)  
[Redacted]  
[Redacted]
- PO Rathour has been a member of the NYPD for six years and is the subject of four prior complaints, involving six allegations. None of the allegations was substantiated. The § 87(2)(g) (Board Review 16).
- PO Carnacchio has been a member of the NYPD for two years and this is his first CCRB complaint (Board Review 17).

#### Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation, as § 87(2)(b) indicated that he intended to file a lawsuit.
  - § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
  - As of February 14, 2018, § 87(2)(b) has not filed a notice claim with the New York City Comptroller's Office.
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Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date